Supreme Court, U. S.
FILED
JAN 9 1980
MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1979

No. 79-991

ROBBIN HOWARD,

Petitioner,

vs.

DES MOINES REGISTER AND TRIBUNE COMPANY, DR. ROY C. SLOAN, and MARGARET ENGEL,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Iowa

BRIEF FOR RESPONDENTS IN OPPOSITION

PAUL E. KRITZER
Associate General Counsel
Des Moines Register and Tribune Company
P. O. Box 957
Des Moines, Iowa 50304

GARY G. GERLACH
Vice President and General Counsel
Des Moines Register and Tribune Company
P. O. Box 957
Des Moines, Iowa 50304

GLENN L. SMITH
DUNCAN, JONES, RILEY & FINLEY
404 Equitable Building
Des Moines, Iowa 50309

Attorneys for Respondents

COCKLE PRINTING CO., 2311 Douglas St., Omaha 68102

In The

Supreme Court of the United States

October Term, 1979

No. 79-991

ROBBIN HOWARD,

Petitioner,

vs.

DES MOINES REGISTER AND TRIBUNE COMPANY, DR. ROY C. SLOAN, and MARGARET ENGEL,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Iowa

BRIEF FOR RESPONDENTS IN OPPOSITION

The Respondents, Des Moines Register and Tribune Company and Margaret Engel, respectfully submit this Brief in Opposition pursuant to Sup. Ct. R. 24 and pray that the Petition for Writ of Certiorari be denied.

REASONS WHY PETITION SHOULD NOT BE GRANTED

I. The Iowa Supreme Court decided this case on a pure question of state law, and no federal question is presented.

The Iowa Supreme Court upheld summary judgment for the Respondents based solely on its interpretation of Chapter 68A, Code of Iowa (1979), Iowa's Public Records statute. *Howard v. Des Moines Register*, 283 N.W.2d

289, 298-300 (Iowa 1979). The trial court had sustained the Respondents' motion for summary judgment on the ground of newsworthiness. The Iowa Supreme Court affirmed, but on a different ground—the Iowa Public Records statute. Thus, the newsworthiness ground, which was not relied upon by the Iowa Supreme Court in affirming summary judgment for the Respondents, is not a legitimate subject for this Court's review. The purview of this Petition is limited to a review of a state supreme court's decision concerning a pure question of state law (Chapter 68A, Code of Iowa (1979), Iowa's Public Records statute).

The Iowa Supreme Court stated the issue of this case in these terms:

> The issue here is whether the fact of plaintiff's 1971 sterilization was a matter of public record at the time of the newspaper disclosure.

283 N. W. 2d at 298. The Iowa Supreme Court identified this key question of law: Were the Snyder and Blakely documents public records under the Iowa statute? The Iowa Supreme Court said:

> Whether these records were public depends upon application of the provisions of Code chapter 68A, Iowa's Freedom of Information Act.

283 N. W. 2d at 299. The Iowa Supreme Court noted that it had previously upheld a constitutional challenge to this law in *Des Moines Register and Tribune Company v. Osmundson,* 248 N. W. 2d 493, 502 (Iowa 1976), and that its interpretation was congruent with a definitive article on the statute published in the *Iowa Law Review.* 283 N. W. 2d at 299. After this examination, the Iowa Supreme Court concluded that:

> The Snyder and Blakely documents which were filed in the Governor's office . . . clearly come within the definition of public records in Section 68A.1.

283 N. W. 2d at 300. This statement is the vortex of the Iowa Supreme Court's decision. It is here that this case focuses on one pure question of state law, which is conclusive on the United States Supreme Court's consideration.

Having found that the Snyder and Blakely documents were public records and not exempted from disclosure by any statute, the Iowa Supreme Court held that the disclosure of information from these documents was not actionable. The Court said:

> We think this case comes within the limitations on the tort imposed in *Restatement* § 652D and applied in *Winegard* [*v. Larson,* 260 N. W. 2d 816 (Iowa 1977)]. Because the documents were public, the information which they contained was in the public domain. *Osmundson,* 248 N. W. 2d at 508.
>
> The fact of plaintiff's sterilization was thus a public as opposed to a private fact and a matter of legitimate public concern. Therefore the disclosure is not actionable. *See Winegard,* 260 N. W. 2d at 823.

283 N. W. 2d at 300. The Iowa Supreme Court also held that the public record ground was sufficient, independently, to support the summary judgment. 283 N. W. 2d at 300. In this reasoning, the Iowa Supreme Court followed uncontroverted decisions of the United States Supreme Court: *Cox Broadcasting Corp. v. Cohn,* 420 U. S. 469, 95 S. Ct. 1029, 43 L. Ed. 2d 328 (1975); *Landmark Communications, Inc. v. Virginia,* 435 U. S. 829, 98 S. Ct. 1535, 56 L. Ed. 2d 1 (1978); *Smith v. Daily Mail Publishing Co.,* — U. S. —, 99 S. Ct. 2667, 61 L. Ed. 2d 399 (1979).

II. Petitioner has failed to meet the requirements set by statute and Supreme Court Rules for a grant of certiorari.

This Petition does not present a substantial federal question to this Court, 28 U. S. C. § 1257 (3), because the Iowa Supreme Court's decision was based solely on a question of state law. Petitioner's "Questions Presented" (Petition, page 2) are defective for being misleading, obscure and inaccurate. SUP. CT. P. 23 (4). Petitioner fails to present "special and important reasons" that would justify a grant of certiorari. SUP. CT. R. 19 (1).

Petitioner presents four questions for the Court's review (Petition, pages 2-3). Here is a brief reply to each question:

1. Question: Did the First Amendment require summary judgment in this case?

Answer: The Iowa Supreme Court held that traditional rules of summary judgment were applied in this case. 283 N. W. 2d at 297-298.

2. Question: Did the First Amendment provide immunity in this case?

Answer: The Iowa Supreme Court's decision was based solely on its interpretation of a state statute. To the extent that the First Amendment provided immunity for the Respondents in this case, the decisions of the United States Supreme Court in *Cox Broadcasting, Landmark Communications* and *Smith v. Daily Mail* are conclusive.

3. Question: Did the fact that part of the information in the article was not obtained from public records destroy respondents' immunity, if any existed?

Answer: The question is misleading and inaccurate. SUP. CT. R. 23 (4). The Iowa Supreme Court held that the essential information concerning Petitioner's sterilization was a matter of public record under the state's public records statute at the time of publication. 283 N. W. 2d at 298-300. In the face of this finding, Petitioner pleads that it is a "fact" that "part of the information in the article was not obtained from public records." Petitioner seems to be challenging the Iowa Supreme Court's determination that the Snyder and Blakely documents are public records. But this question fails because the United States Supreme Court does not have jurisdiction to review a state court's interpretation of a state statute when there is no substantial federal question presented.

4. Question: Was the time lapse between the Petitioner's sterilization and the publication of the article material in determining whether the use of Petitioner's name was "newsworthy"?

Answer: As this ground was not the basis for the Iowa Supreme Court's decision, it is not a legitimate subject for review by this court.

III. The United States Supreme Court has no jurisdiction to review the decision of the highest court of a state based on a pure question of state law.

Since its earliest decisions, the United States Supreme Court has followed the long-standing precedent that it will not review the decision of the highest court of a state based on a pure question of state law where there is no federal question presented. *Marbury v. Madison,* 5 U. S. (1 Cranch) 137, 2 L. Ed. 135 (1803); *Martin v. Hunter's Lessee,* 14 U. S. (1 Wheat.) 304, 338-342, 4 L. Ed. 97, 105-

107 (1816); *Smith v. Hunter,* 48 U.S. (7 How.) 737, 742-744, 12 L.Ed. 894, 895-896 (1849); *Christ Church v. County of Philadelphia,* 61 U.S. (20 How.) 26, 28, 15 L.Ed. 802, 803 (1857); *Santa Cruz County Supers. v. Santa Cruz R. Co.,* 111 U.S. 361, 362, 4 S.Ct. 474, 28 L.Ed. 456, 457 (1884); *Kansas City Star Company v. Julian,* 215 U.S. 589, 589-590, 30 S.Ct. 406, 406-407, 54 L.Ed. 340 (1909); *Ward v. Love County,* 253 U.S. 17, 22-23, 40 S.Ct. 419, 421, 64 L.Ed. 751, 758 (1920); *Herb v. Pitcairn,* 324 U.S. 117, 125-126, 65 S.Ct. 459, 463, 89 L.Ed. 789, 794 (1945). The United States Supreme Court succinctly stated this rule in *Waters-Pierce Oil Company v. Texas* (No. 2), 212 U.S. 112, 116-117, 29 S.Ct. 227, 229, 53 L.Ed. 431, 434 (1909):

> It is well-settled in this court that where a state court decides a case upon an independent ground not within the Federal objections taken, and that ground is sufficient to maintain the judgment, this court will not review the case. *Leathe v. Thomas,* 207 U.S. 93; *Eustis v. Bolles,* 150 U.S. 361; *Giles v. Teasley,* 193 U.S. 146.

Stated another way, a state court's judgment that construes a state statute and does not present a federal question is conclusive upon federal courts. *Palmer v. Texas,* 212 U.S. 118, 131, 29 S.Ct. 230, 234, 53 L.Ed. 435, 441 (1909).

In this case, it is clear that the decision of the Iowa Supreme Court is based on a state court's interpretation of state law in which no federal question is presented. 283 N. W. 2d at 298-300. Moreover, the Iowa Supreme Court clearly states that the judgment rests on a non-federal ground that is sufficient, independently, to sustain it. 283 N. W. 2d at 300.

IV. Conclusion: The United States Supreme Court should dismiss the Petition for Writ of Certiorari for want of jurisdiction.

The decision of the Iowa Supreme Court presents no federal question for review. Petitioner has failed to present issues to the Court with either "accuracy" or "clearness." SUP. CT. R. 23 (4). Petitioner has failed to state any "special and important reasons" for the Court to grant a writ of certiorari. SUP. CT. R. 19 (1).

The news report in question is an outstanding example of award-winning, professional investigative reporting. Compare, *Cantrell v. Forest City Publishing Company,* 419 U.S. 245, 247, 95 S.Ct. 465, 467-468, 42 L.Ed. 2d 419, 424 (1974). This excellence was recognized by both the Iowa Supreme Court, 283 N.W. 2d at 302, and the Iowa Associated Press Managing Editors, who, in presenting Engel with their First Prize Award for Investigative Reporting, applauded her for her "thorough research and documentation" and her "very important public service, with tasteful handling of sensitive materials" (Quoted from Appendix, filed jointly by both parties on appeal to Iowa Supreme Court, pages 76-77).

The Respondents respectfully pray that the Petition for Writ of Certiorari be denied for lack of jurisdiction.

Respectfully submitted,

PAUL E. KRITZER
Associate General Counsel
Des Moines Register and Tribune Company
P. O. Box 957
Des Moines, Iowa 50304

GARY G. GERLACH
Vice President and General Counsel
Des Moines Register and Tribune Company
P. O. Box 957
Des Moines, Iowa 50304

GLENN L. SMITH
DUNCAN, JONES, RILEY & FINLEY
404 Equitable Building
Des Moines, Iowa 50309

Attorneys for Respondents